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No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

POLARIS INSURANCE COMPANY, LTD, a foreign corporation

Petitioner

CHARLES J. BRUNET, PLAINTIFF

Respondent

MAGNOLIA HOLDINGS

Respondent

On Petition forWrit of Certorarai to the Supreme Court and the Fifth Circuit Court of Appeal of the State of Louisiana

PETITION FOR WRIT OF CERTIOARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the 5th Cir. ruling that Marine Marketing was inapplicable because it concerned doing business in the State of Louisiana.

1. WHETHER THE 5TH CIRCUIT COURT OF APPEAL ERRED IN RULING THAT MARINE MARKETING SERV. DOES NOT APPLY HEREIN AND THAT POLARIS MUST POST SECURITY BY AUTHORITY OF La. R.S. 22:1245 and 1255. #

2. WHETHER THE 5th CIRCUIT COULD RULE THAT AS A MATTER OF PUBLIC POLICY WHEN THE STATE OF LOUISIANA IS A PLAIN AND CLEAR LANGUAGE STATE.

3. WHETHER THE SUBJECT OF LA. R.S. 22:1255 DOES NOT CONCERN DOING BUSINESS IN THE STATE OF LOUISIANA BUT ACCESS TO THE COURTS

4. WHETHER THE 5TH CIRCUIT COURT OF APPEAL ERRED IN RULING THAT THE PLAINTIFFS' MOTION TO STRIKE POLARIS' PLEADINGS AND TO ORDER POLARIS TO POST SECURITY WAS DECIDED IN CONSIDERATION OF A MEMORANDUM AND EXHIBITS THERETO THAT WERE INEFFECTIVE IN THAT THE MEMORANDUM WAS IMPROPERLY SERVED AND THE EXHIBITS WERE NOT SERVED THEREBY DENYING POLARIS DUE PROCESS AND EQUAL PROTECTION OF LAW

5. WHETHER THE ADVERSE PRESUMPTIONS ARE SUPPORTED BY THE FACTS OR THE LAW ARE IN VIOLATION OF THE DUE PROCESS AND EQUAL

PROTECTION CLAUSES OF THE UNITED STATES CONSTITUTION

6. WHETHER THE 5TH CIRCUIT COURT OF APPEAL ERRED IN RULING THAT STATE of Louisiana In the Interest of J.B., 499 So. 2d 611 IS APPLICABLE AND POLARIS APPEAL WAS UNTIMELY.

LIST OF PARTIES

Before this court are those set forth in the caption:
Charles J. Brunet, plaintiff employee of Magnolia Holdings, Inc.;
Magnolia Holdings, Inc. the defendant employer of Plaintiff and Polaris Insurance Company, Ltd., insurer of Magnolia, Direct Action Defendant of Brunet and Third Party Defendant of Magnolia.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Polaris is entitled to Due Process of Law and Equal Protection of the Law. These guarantees were not recognized by the courts in Louisiana.
The legislature of the State of Louisiana defined Maritime Insurance La. R.S. 22.6(13)(e) and exempted Unauthorized Insurers providing Maritime Insurance La. (Exemptions), and La. R.S. Sect. 22:611, Part XXIV, which regulated the contract and R.S. 22:1249 B(7) Part XXVII which provided regulation and enforcement. The Courts disregard the exemption holding that denial of access to the courts is not covered by the exemption pursuant to La. R.S. 22:1255. The legislature had enacted La. R.S. 22:1250 which empowered the Insurance Commissioner to sue unauthorized insurers and brokers for injunctive relief. 1250 and 1255 are kissing cousins. They coexistive and are written on the same level of importance in the code. Appellate decisions hold that the unauthorized insurer is exempted from the power of the Commissioner by 1249. The courts claim that their power is not similarly circumscribed. La. Civ. Code Arts. 1, 2, and 3 and La. Civ. Code Art. 9 reserve the power of making law and public policy to the legislature. The La. Constitution defines the powers of the courts at Art. 5 and permits power to review the law and the facts (relative to the case at issue) only but does not permit rewriting the laws themselves. Louisiana is a clear language state and the courts must interpret the law as written.

The lower court refused to obey its own Local Rules which were formulated to protect a litigant from abusive service of documents. Local rules CIVIL RULE XVI NOTICE, CIV RULE XVII EXHIBITS. Plaintiff presented documents in court which had not been served on Polaris and which had not been filed at least 72 hours before the hearing pursuant to Local Rules.

REASONS FOR GRANTING WRIT

The business of Maritime Insurance is Global. The incidents of loss are Local. The laws of every jurisdiction are presumed knowledge of everyone subject thereto. Laws should be fair rather than arbitrary, clear rather than ambiguous and equally applied with no favor to the local litigant over the foreign litigant.

It is unfortunate that the Fifth Circuit Court of Appeal felt bound to construct a happy ending for Plaintiffs. Louisiana is a clear language state. The law is what the legislature says it is as written in its statutes. The Louisiana courts have no license to establish public policy at any level, District Court , Appellate Court or Supreme Court. The happy ending is created by the court's ruling that as a matter of public policy Polaris is not entitled to appear in its courts without posting security despite a clear exemption from doing same.

Access to the courts is a fundamental aspect of fairness. The right to a fair hearing is basic to due process. Neither is it fair to base the price for hearing on allegations and unproved fact demanding five hundred thousand dollars until the court proceedings are finished. The so-called fairness to Polaris for Posting Collateral is the proposed recovery; that should Polaris win, the impecunious plaintiff may be ordered to pay interest. As a practical matter, recovery of any interest from the impecunious claimant is not merely improbable but, in reality, impossible. To hold this dubious remedy satisfies the requirement of due process and equal protection of law is a fiction.

Our real world is defined by speed of communications on the internet, Website pages and interstate and international trade. Everyone is presumed to know the law of the

jurisdiction in which he does business. If this presumption is consistent with due process and equal protection of law one must be able to rely on the clear meaning of the terms. The law as it is written should be the law as applied. A disturbing modern trend is the manifestation in government of the "speak think" of George Orwell's, "Brave New World". The Orwellian Government destroys the freedom of its people by redefining terms and manipulating language so as to effect governmental a restrictive policy which strips its people of their civil rights. War is peace, slavery is redefined as freedom. In the instant case the Louisiana courts tell us this is a case of access to the courts and not control of the business of insurance, not regulation of the business of insurance and not the same thing as the Commissioner having been authorized to bring legal action regarding the sale of insurance. The so called access sections were placed on the same level as the section empowering the Commissioner to commence litigation as in Marine Marketing. Litigation is the business in which all businesses share similarity. Insurance and litigation are unfortunate realities of doing business in America today.

Wilburn Boat gives the states control of the business of insurance of they chose to do so but the states have an obligation in exercising control to do so with a comprehensive scheme is part of the requirement for the states to regulate the business of insurance.

In this case the unfairness is manifest with the manner in which the court permitted the local resident to serve moving papers on Polaris' counsel by FAX while he was on an airplane en-route to the court for hearing, to introduce into evidence written documents that failed to comply with the hearsay rule and admitted as evidence, over objection, an unauthenticated letter allegedly written by the British Virgin Islands Government Office. The local court disregarded the disclaimer which the Government Office appended thereto that the

statements made therein were true and correct. The local court also disregarded its own local rules regarding service of the moving papers and exhibits all to the prejudice of Polaris.

The local court issued any order plaintiff's counsel requested, believed everything plaintiff said and disregarded everything Polaris presented by way of documentary evidence. Typical of said actions were the issuance of contempt citations beyond the District Court's jurisdiction and orders and judgments which were so obviously unfounded that the Fifth Circuit Court of Appeal for the State of Louisiana vacated them.

PETITION FOR WRIT OF CERTIOARI

Polaris Insurance Company, Ltd. respectfully petitions for writ of certioari to review the judgments and orders of the Supreme Court of the State of Louisiana, the Fifth Circuit Court of Appeals of the State of Louisiana, and the 24th District Court, Parish of Jefferson, State of Louisiana.

OPINIONS BELOW

The Supreme Court of Louisiana denied Polaris Writ of Certioarai to review the Order of the Fifth Circuit Court of Appeal,. without comment, reasons. The date of the Supreme Court's order is May 29, 1998 which is within the time for filing said Application for Writ.

Opinion and Reasons of Fifth Circuit Court of Appeal State of Louisiana Reversing In Part and Affirming In Part. C Judgment on Motion to Compel Discovery, AUGUST 5, H Judgment and Reasons on which the Court based its Order that Polaris post bond for security, I Judgment on Motion to Strike Pleadings and for Sanctions, J November 5th Order Re: Joint Oral Motion for Sanctions K Order on Judgment Debtor Rule; L Order to Appear as witness, M No Preliminary Default Order found in the Record.

STATEMENT OF JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. section 1254(1). The Petition was filed herein on August 27, 1998

The order of the Supreme Court of the State of Louisiana was made on May 29, 1998; Polaris' application was timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process and Equal Protection of the Law in that the Courts of the State of Louisiana, under La. Civ. Code Ann. Art. 9, is a clear language state, the Louisiana courts have rewritten the law and have taken upon themselves the power to establish public policy which is reserved to the legislature. La. R.S. Sect. 22:611 exempts Polaris from the requirements of contract as prescribed by the State of Louisiana, La. R.S. 22:1249 and La. R.S. 22:1269 exempt Polaris from the requirements of Posting Bond and from the Prohibitions of La. R.S. 1254 and 1255 regarding use of the Louisiana Courts. C.C. Arts. 1, 2 and 3 prohibit the courts from establishing public policy and reserve that power to the legislature. La. Code of Civ. Pro. art. 1155 required service of supplementary matter, Local Rules of Court for the Twenty-Fourth District of Louisiana, Parish of Jefferson CIVIL RULE XVI NOTICE Local rules CIV RULE XVII EXHIBITS required service at least 72 hours prior to hearing of the exhibits used in court upon which the judgment was based. There was no service, and no jurisdiction, thus the court orders are invalid.

A. CONCISE STATEMENT OF THE CASE

Polaris Insurance Company, Ltd. filed its motion for Devolutive Appeal on November 15, 1996, Exhibit A, in which it included all prior orders and judgments said motion was intended to include all matters. Said appeal was allowed, Exhibit B.

On October 2 and 3 1996, Plaintiff and Magnolia Holdings, Inc., M/H filed a Motion to Strike Polaris' answers

based on R.S. 22:1255. On October 4, 1996 Plaintiff filed a motion to file a supplemental memorandum. That was the date of the hearing on the original motion. In effect plaintiff filed its supplementary memorandum at the hearing. On October 15 and 17 1996 plaintiffs filed motions for sanctions and for adverse presumptions. On October 9, 1996 plaintiffs filed a motion for a reconsideration. The court granted plaintiffs an order to compel the discovery of the quote letter all applications. The court held in abeyance the issue of the bond.

October 17, 1996 the plaintiffs filed a motion for reconsideration of the Motion To Strike the Pleadings Filed By Polaris. An Expedited hearing was set for October 25, 1996. Polaris responded with an opposition to motions to strike an for the adverse presumptions.

On October 24, plaintiffs filed a motion to file a joint supplemental memorandum in support of the motion to strike the pleadings based on R.S. 1255. On October 24, 1996 plaintiff's attempted service on Polaris by FAX and sent a copy of the supplemental memorandum by Federal Express. Plaintiffs brought the "book" of exhibits to court. They had only one copy.

On October 25, the hearing convened. Polaris counsel participated by telephone. On October 25, 1996 the court granted the motions and the adverse presumptions. The court struck the pleadings of Polaris.

The judgment says: IT IS ORDERED AND ADJUDGED AND DECREED that the joint motion to strike pleadings filed by Polaris Insurance Company, Ltd. or to require posting of a bond pursuant to La. R.S. 22:1255 filed herein by Charles J. Brunet Magnolia Holdings and Maintenance Dredging, Inc., be GRANTED.

The court then ordered that Polaris post a bond in the amount of $500,00 by 12:00 noon on Monday, October 28, 1998 which bond is to be obtained from a A-Best rated bonding company, or other good and sufficient surety. If Polaris fails to post the bond bay 12:00 noon CST on Monday October 28, 1996, the entirety of the pleadings filed by Polaris will be struck from the record and the Clerk of the Court and shall enter a preliminary against Polaris Insurance Company, Ltd. Polaris pleadings had already been stricken as shown above. The second order was surplusage.

No contempt order was ever issued against Polaris regarding the bond. The court made no further orders re: the bond.

The District Court issued an adverse presumption that Polaris quoted crew coverage and that the M/H application requested crew coverage. Polaris, in opposition to said motion re: adverse presumption was unable to produce a copy of the application and produced other documents which had been given to plaintiffs before to show that Polaris had not offered crew coverage nor workers compensation by way of a binder that had been sent directly to M/H on November 6, 1993 which showed no crew coverage nor coverage of employees and that M/H was required to maintain Worker's Compensation and Employee's Liability Insurance for its employees. Polaris also produced evidence by way of documents that showed that both Polaris and Keith Fogg M/H's agent were asking M/H for the application as late as November 22, 1993, after Polaris had delivered the policy on November 18, 1993.

Please refer to Appendix D, E, F, G and E which demonstrate that the court and plaintiff referred to the supplementary memorandum and its exhibits and to documents that were not timely filed by the Court of Appeals own admission. The court of appeals agreed that the filing of

October 24, 1996 was not timely but mistakenly said that it was not used.

At all times herein M/H had in its possession the originals of the policies signed by Miguel Golcher, Managing Director of Polaris were produced in court on October 25, in the stack of exhibits not served on Polaris. Said stack and the original policies were brought into court on October 25, 1996 by M/H as part of its evidence in support of its motion to strike and to order posting security. All of said policies had been sent directly to M/H or received by M/H within a reasonable time from date of request and date of issue and prior to the date of loss.

Plaintiffs filed a Supplementary Memorandum, which was the core of their Motion to Strike Polaris' Pleadings, on October 25, 1996, the day before the hearing in violation of local rules, . Polaris was improperly served said moving papers by FAX on October 24, 1995 and by Federal Express. The document served by Federal Express did not arrive until 2:00 p.m. at the office of counsel for Polaris on October 25 1998, the day of the hearing when the hearing was already in progress. The exhibits were not served on Polaris. Polaris had no time to demand them. At the first hearing of October 4, 1996, on the Motion to Strike the court had announced that it did not have sufficient evidence before it to rule and that it would hold the matter in abeyance. The Plaintiff having not submitted sufficient evidence entitled Polaris to a dismissal of the motion. The court could and should have ruled against the motion. There was no continuance of the hearing on the Plaintiffs' Motion that Polaris to Post Security or in the alternative that the Court Strike Polaris Answers and order judgment against Polaris. The court continued the trial date which had been set for October 8, 1996 to October 29, 1996.

Polaris, in response to plaintiff's motion to produce the application for insurance had produced documents that showed

that Polaris and Keith Fogg, agent for plaintiff, Magnolia Holdings, had repeatedly asked that plaintiff M/H send its application. Polaris' counsel received the blank copy of the application from Mr. Carl J. Hebert. It had been attached to a FAX to M/H. Plaintiff M/H received binder and the policy without sending the application that plaintiff's themselves demanded. These documents explained that there was no application available because plaintiff had never made one. Despite all the evidence to the contrary on October 25, 1996 the court granted the motions and the adverse presumptions. See Appendix G.

Examining the statute we find that La. R.S. 22:1249 defines unauthorized insurers and exempts some of them from the (Code) effect of the following sections.

C. SUMMARY OF ARGUMENT

1. Marine Marketing does apply because the statutory exception is in the jurisdictional section of Part XXVII. It was clearly intended to limit the executive, judicial power and the power of the others who are the subject or the object of the several sections. The finding that 22:1255 only concerns access to the courts is absurd. Litigation is part of doing business as much as is selling or other facets of the modern enterprise. Find one successful enterprise without a stable of lawyers, both corporate and litigation. Two necessities common to all of today's business are insurance and lawyers.

2. The 5th Circuit Court of Appeal does not have the power to establish public policy. Public Policy is established by the Legislature in the State of Louisiana. Louisiana is known as a clear language state when considering construing a statute. La. Civ. Code Ann. art. 9(West 1990).

2. The 5th Circuit Court of Appeal citation of extension of bonding requirements requirements for Excess and Surplus Lines Brokers to the case of Marine Insurance does not support its attempt to establish public policy or compelling that

the legislature meant that marine insurers post bonds to gain access to the courts. R.S. 22:1269(Exemptions) belies that argument.

3. The 5th Circuit Court of Appeal citation of STATE of Louisiana In the Interest of J.B., 499 So. 2d 611 is inapplicable and in error. J.B. concerns the appealability of a contempt *citation AND the Judicial Jurisdiction which should be determined by this court rather than the inferior courts. In this case no contempt was found, instead, the District Court merely granted the plaintiff's motion to strike defendants pleadings and subsequently ordered Polaris post a bond. There was no finding of contempt. The 5th circuits citation of the District Court order of 11/4/98 is in error.

4. The 5th Circuit Court of Appeal's ruling that the Adverse Presumption was proper as a matter of law and fact is in error because Polaris showed that it had made diligent search for the quote letter demanded and failed to find it, that the letter was addressed to plaintiff and plaintiff should have had the original and that the subject matter, a quote of premium for crew coverage was irrelevant and immaterial and not evidence of the insurance coverage of the policy purchased and delivered and that further there was convincing evidence that Plaintiff M/H had never submitted an application but had never the less received a binder and policy.

Argument

1. WHETHER Marine Marketing was inapplicable because it concerned doing business in the State of Louisiana.

In its Opinion on appeal the 5th Circuit disregarded Marine Marketing Services as inapplicable because it was concerned with doing business in the State and applied its own conscience by pronouncing that as a matter of Public Policy the exemption of 1249 did not apply to 1255 which concerned access to the courts and not with doing business. The 5th Cir. ignored section C. of 1255 which refers to section 1253 which

concerns the same acts constituting doing business provisions in Section 1249. This shows that even 1255 concerns doing business in the state because if the defendant is not doing business it is not subject to the jurisdiction of these courts.

Standard of Review at this time is de novo based on MARINE MARKETING SERV. v. DEPT. of INS., 673 So. 2d, at 338. The court must apply the clear and unambiguous rule of interpretation herein as pronounced in Vehers v. Jefferson Insurance Company et al, Defendant-Appellant 166 So. 2d 20 and Albers v. Jacob J. Schwab, et al and Fidelity General Insurance Company, 223 So.2d 301. at page 302 N 2. A trial on the merits had to be held to determine defendant's status regarding requirement to post bond. The interlocutory judgment becomes final and is appealable as a final judgment and the issue regarding the status of the defendant in the court of appeals is not subject to any duty to post security. [Vehers, at page 21]. Status and Facts

STATUS AND FACTS

On October 3, 1996 Plaintiffs M/H and Brunet brought a Joint Motion to Strike Polaris Pleadings or for an Order that Polaris Post Security requesting an expedited hearing thereon. The trial was set for October 8, 1996, only four days later. Plaintiffs attached only the copies of the insurance policies herein to their exhibits. No affidavits were attached.

ARGUMENT

Plaintiff relied upon La. R. S.+ 22:1254 and 1255 (West 1995); in regard to the act of transacting of a business of insurance by an unauthorized insurer. In order for Appellees to prevail Appellant must be subject to the requirements of + 1254 and + 1254. Appellant must be defined as an unauthorized insurer by the code. Section 1255 states in the pertinent part:

La. Rev. Stat. Ann. Sect. 22:1255 (A)(1) (West 1995)

(A) Before any unauthorized insurer shall file of cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall. . . file with the clerk

of the court in which such action, suit or proceeding is pending a bond with good and sufficient sureties.

It is not contested that the La. R.S. (A) of + 1249 subjects said unauthorized insurers to the authority of the insurance code by doing business in the state. At issue is whether the same jurisdictional statute La. R.S. 22:1249 B (7): and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy." determines and limits the authority of the courts over said "unauthorized insurers" in Louisiana.

B This Section shall not apply to:

(7) Insurance on vessels, crafts, hulls, cargos, marine builders risks, marine protection

The list of exceptions begins by stating that lawful transactions of "surplus line insurance" and "reinsurance" are exempt. More importantly, sub-paragraph (7), Appellant is specifically excepted from the definition of an "unauthorized insurer". La. Rev. Stat. Ann. § 22:1249(B)(7), Paragraph (B) states in the pertinent part:

The instant case deals with a claim made under a marine protection and indemnity policy issued and delivered by Appellant. The section cited above was originally enacted 1968 with Paragraph (A). Paragraph (B) of + 1249 was added by revision in 1968. Paragraph (B) comprises a list of exceptions to paragraph (A), which the legislature added to bring PART XXVII up to date is applicable in this case. Under the express provisions of La. Rev. Stat. Ann. § 22:1249(B)(7), Appellant, although it may not be authorized to sell policy in Louisiana is not defined as an "unauthorized insurer" that is subject to the remainder of Part XXVII which also contains La. Rev. Stat. Ann. § 22:1249(B)(7) and is not subject to the requirement of La. R.S. 22:1255, consequently, Appellant is not required to post bond or other security in this case.

"Thus, placing and delivering marine protection and indemnity insurance and hull insurance is excepted from the

definition of transacting a business of insurance by an unauthorized insurer."

2. The courts cannot make public policy in the face of contrary legislation

In Louisiana, Article One of the Louisiana Civil Code (Code) declares that in Louisiana "[t]he sources of law are legislation and custom". LSA -C.C. art 1. Article two emphasizes the prevailing source of law; legislation, stating that [l]egislation is a solemn expression of legislative will, "LSA C.C. art. 2 and article three of reinforces this focus on legislation as the prevailing source of law, stating that although "[c]ustom results from practice repeated for a long time and [is] generally accepted as having acquired the force of law. Custom may not abrogate legislation. "LSA- C.C. art. 3.

Nowhere in Louisiana Legislation is it suggested that a court in this state can decide an issue on "public policy" grounds. On the contrary, the code is specific with regard to the sources of law available to a court, of which public policy is conspicuously absent.

Therefore, Polaris respectfully urges that the 5th Circuit Court of Appeal erred by applying the doctrine of "public policy" as perceived by the 5th Circuit in clear opposition to the express public policy enacted by the Louisiana legislature.

The United States Supreme Court has long held that "[p]rimarily , it is for the [State] lawmakers to determine Public Policy of the State, Twin City Pipe Line Co. et al. v. Harding Glass Co., 285 U.S. 353, 357 (1931). Therefore, each state can determine exactly what constitutes "public policy" within its borders. This Honorable Court has long held that:

[I]n a state governed exclusively by written laws, as [Louisiana] is, the courts are much less free to determine what is or is not public policy. The Public Policy of a state thus governed by written laws is not a mere matter of impression of opinion, or a matter to be determined from what appears to be, or not to be, to the public interest; but is a matter expressed more or less

definitely in those written laws, and to be there searched for, and when found, to be enforced with the same inflexibility as a the written laws themselves.

Whether the common-law courts would consider themselves at liberty to refuse to enforce in any given case a recognized public policy, we do not know ... However, whatever latitude the common law courts may enjoy in that regard, ours enjoy none whatsoever, but are rigidly tied down by and express statute, which declares that parties cannot by their conventions derogate from public policy.

Female Orphan Society v. Young Mens Christian's Ass'n., 119 La. 278, 284, 44 So. 12,17-18 (La. 1907)

It has long been the law if Louisiana that the provisions of a statute should be construed in harmony with the whole statute. See Tuck v. Commercial Standard Ins. Co of Dallas, Tex., 164 So. 472, 176 (La.App. 2nd Cir. 1935).

Consequently, in 5th Circuit Court of Appeal has erred in assuming the power to disregard the clearly expressed will of the legislature in Part which XXVII La. R.S. + 22:1249 B (7).

In its insistence that the cases cited all refer to doing business the 5th Cir. ignored + C. of 22:1255 refers to + 22:1253 re: service of process, access to courts, which concerns the same acts constituting doing business provisions in + 1249. This shows that even 22:1255 concerns doing business in the state because if the defendant is not doing business it is not subject to the jurisdiction of these courts. See 22:1255 C (1) re: issuing policy or contract, (2) re: insurer has not been transacting business ... and (3) wherein the person served was not doing any of the acts enumerated in 22:1253. Doing business in the state is a precondition to application of 22:1255 thus the jurisdictional exemption of 22:1249 applies to 22:1255. The preconditioning statute 22:1249 exempts Polaris from the rest of the section.

It is an attenuated subtlty that the 5th Circuit declare the provision of accessibility of the courts is not regulation of insurance. The jurisdictional section defines the powers of the

state of Louisiana in regulating Unauthorized Insurance and defines Unauthorized insurers for the purpose of the statute. It applies to the action by judicial branch as well as to the executive branch of government and determines the meets and bounds of the executive and judicial branches. In the case of the judicial branch it excuses these insurers from applying for admission and relieves them from control by the Commissioner and withholds from the courts power to require the bond.

3. WHETHER SUBJECT OF LA. R.S. 22:1255 DOES NOT CONCERN DOING BUSINESS IN THE STATE OF LOUISIANA BUT ONLY ACCESS TO THE COURTS

The 5th Circuit Court's finding that the exception does not apply because 1255 concerns access to the courts. The legislature controls access to the courts by determining the parameters of causes of action, the parties who may sue and who may be sued, jurisdictional amounts, venue, procedure for service of summons and complaints, age of majority and competency, and controls access to the courts in special circumstances such as this by special statutes. Litigation is as much a part of doing business as is production, sales, financing, etc. No matter what the enterprise may be it will require lawyers and become involved in litigation whether enforcement of contracts, for damage to goods, and for collection of fire insurance after a fire and so on and on.

Placing the courts as the arbiter regarding their own power is a great temptation that when themselves limited law that they would rule in their own favor, expand their power and thereby place themselves above the law.

Under the traditional Separation of Powers the courts are subject to control by the legislature except for the powers granted the courts by the Constitution of the State of Louisiana. Examination of the insurance code reveals that the State of Louisiana has enacted a comprehensive Code by which all aspects of Insurance are regulated. See Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S: 310, 75 S.Ct. 368 (1955) It

is the provision of comprehensive scheme of insurance regulation that supports the several states' authority to control insurance. In reading + 1250 said section empowers the Commissioner and in reading +s 1245 and 1255 said sections empower the courts and reading + 1249 B (7) limits the power of each respectively. As a practical matter, all of said sections empower or circumscribe the power of the courts. Put another way, if the Commissioner does not have the power to bring an action the court does not have the power to entertain it; in 1256, the power of the court to declare a policy void; in 1253 the power to assume jurisdiction etc. Every section in Part XXVII either confers or circumscribes judicial power. Section 1249 is the mother of all the power of all other sections which are in pari matria thereof.

Thus, regulation of insurance goes further than the action of the Commissioner but includes litigation. The Commissioner had filed a suit in Marine Marketing and the court found that it could not grant the relief the commissioner requested. The legislature had enacted a comprehensive insurance code all, parts of which it intended to be effective. La. R.S. 22:1255 is still effective against all non exempt unauthorized insurers.

The Courts are not super legislatures. The courts cannot make decisions contrary to the clearly expressed policy of the legislature no matter how desirable it may be and the courts must accept the doctrine of stare decisis.

The 5th circuit is clearly in error in its attempt to disregard not only Marine Marketing but also Vehers, Albers and Acadiana Shippers.

The 5th Circuit's observation that within Part XXVII the Excess and Surplus Lines Brokers must post bonds is neither persuasive nor logically any indication of legislative intent that the legislature intended to apply any other bond requirement in the case of Marine Insurance. On the contrary it shows that the Legislature considered it necessary and proper to express its will in statutory form regarding Excess and

Surplus Lines and chose not to do so regarding the exemption regarding Marine Insurance. AND THAT Surplus Lines Broker's sections requiring bonds cited by the 5th Circuit in support of its ruling, ++ R.S. 22:1256 through 22:1268 and 22:1270, are later exempted by the enactment of the legislature at La. R.S. 1269 Exemptions A(1) Ocean Marine and Foreign Trade Insurance etc. These are very same types of insurance as exempted in the jurisdictional statute + R.S. 22:1249 B including Marine Insurance, subsection (7). This should remove all doubt regarding the will of the legislature and public policy.

The court's excursion in distinguishing the application of La. R.S. 22:1254 from its kissing cousin 1255 is an exercise in ambivalence. 1254 is far more controlling than 1255 and yet the 5th Cir. remarkably finds that it qualifies for the exemption and does not concern access to the courts. Is there a case in point not cited in the 5th Cir. decision.

The 5th Circuit may not extend the requirement enacted regarding in Excess and Surplus Lines beyond its clear and unambiguous meaning no more than the Court could shrink the exemption of the Excess and Surplus Lines exemption to benefit a pleasure boat rather than a commercial vessel according to Marine Marketing.

INTERPRETATION OF STATUTE BY THE CLEAR AND UNAMBIGUOUS RULE IN
MARINE MARKETING SERV. v. DEPT of INS., 673 So. 2d, at 338

In Marine Marketing Serv. v. the Commissioner of Dept of Ins., 673 So. 2d 335, 338 [(La. App. 1st Cir. 1996), writ denied] 673 So.2d 335 (La. 1996). At page 338 the court cited the body of La. R.S. 22:1249 and the heading of the B section,

"This Section shall not apply to:"

(7) insurance on vessels, crafts, hulls ... protection and indemnity or other risks including strikes and war risks commonly insured under ocean marine and wet marine forms of policy."

Thus, placing and delivering an marine protection and indemnity insurance is excepted from the definition of transacting a business of insurance by an unauthorized insurer.

Marine protection and indemnity insurance is defined in the Louisiana Insurance Code. See La. R.S. 22.6(13(e) Louisiana revised statute 22:6(13) includes "marine protection and indemnity insurance" as a category of Marine and transportation (inland marine) insurance. Under section (e) of this statute, "marine protection and indemnity insurance" is defined as insurance against legal liability of the insured for,

loss, damage, or expense incident, operation, chartering, maintenance use, or repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage to the ownership of another person.

Louisiana Revised Statute 22:611 includes marine and transportation (inland marine) insurance 22:1249(B)(7)." See Marine Marketing, 673 So. 2d, at 339.

The Marine Marketing Court stated: "[t)his statute clearly provides that the `authorization requirement' shall not apply to insurance on hulls or marine protection and indemnity insurance." Marine Marketing Serv. v. Dept. of Ins., 673 So. 2d, at 338 (emphases added). If the Commissioner is not entitled to regulate the sale of maritime insurance by application of Section La.R.S. 22:1250 of part XXVII as against a broker, because of La.R.S. 22:149(A)(7) there is no regulation and no authorization required of an unauthorized insurer to sell marine insurance including the requirement for filing of a bond or surety, because such insurers are not the class of unauthorized insurers thus regulated by the code. In Marine Marketing, (supra) [u]nder the clear wording of La.R.S. 22:1249(B)(7), if a foreign company issues hull and/or marine protection and indemnity insurance on a vessel, it is exempt from regulation by the Commissioner." To further clarify its position, the First Circuit explained that "[t]he exception contains specific examples of risks that the legislature concluded were `commonly insured' under ocean or wet marine forms of policy" Marine Marketing, 673 So. 2d, at 340.

The facts in the First Circuit's well reasoned and fully explained decision bear a strikingly similarity to this case. In Marine Marketing, a specialized foreign insurance broker was accused of illegally transacting business in Louisiana without authority for selling two mariner's insurance policies providing coverage for recreational vessels. Marine Marketing, 673 So. 2d, at 336. As in the case at bar, "the trial court in Marine

Marketing attempted to find the legislative intent behind the exception, concluding that coverage for recreational boats was beyond the intended scope of the marine exception."

La. R.S. Sect. 22:611 which is the first section in Part XIV titled Scope of Part of CHAPTER 1 INSURANCE CODE Part XIV THE INSURANCE CONTRACT. which reads as follows:

Sect 611. Scope of Part

A. The applicable provisions of this Part shall apply to insurance other than ocean marine and foreign trade insurances.

Louisiana has chosen not to regulate the formal terms of the marine insurance contract.

The First Circuit looked to + 22:1249 B (7) and R.S. +22:6(13)(e) of the Insurance Code to define marine protection and indemnity insurance, concluding, "that La.R.S. 22:1249(B)(7) and 22:6(13)(e) are clear and unambiguous".

Thus, the lower court erred when they searched for the legislative intent behind these statutes instead of applying the statutes as written." Marine Marketing, 673 So. 2d, at 338. Similarly, Appellant contends, the lower court in this case erred when it searched for the legislative intent behind these statutes instead of applying the statutes as written.

The form, arrangement and announced purpose of the subsection and the similar treatment of Surplus Lines Insurance clearly shows a shows pattern of exception of some classes of unauthorized insurance and insurers that demonstrates a well considered system of control of some and not of others.

Therefore, Appellant contends, that the holding and analysis followed by the First Circuit in Marine Marketing should be applied in this case and Appellant should not be required to post a bond as a condition to defense of this claim.

La.R.S. 22:1249 part XXVII, on its face is jurisdictional in nature and this purpose adds all the more to Polaris' argument that the exception was meant to exclude its policy from the force and effect of La. R.S. Sections 22:1254 and 22:1255. Without this jurisdictional construction the force and

effect the courts could not apply any of the Louisiana Insurance Code to Polaris.

Marine Marketing is instructed by the clear and unambiguous meaning of the statute.

The statutes are not irreconcilable. The language of the two read together says: any unauthorized insurer must post a bond, except for those exempt under the provisions of La.R.S. 22:1249 B. The application of La.R.S. 22:1254 and La.R.S. 22:1255 is merely limited by La.R.S. 22:1249 but not destroyed.

INTERPRETATION AND CONSTRUCTION OF THE STATUTES

This court will be further assisted by the Louisiana rule for Interpretation of Statutes. First and foremost is the Louisiana Rule of INTERPRETATION OF LAWS Article 9 Clear and unambiguous law.

"When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." This rule has support in many other jurisdictions.

The right of a person to an exemption should never be defeated through construction when he is a person within the exempted class. St. Louis v. Bender, 248 Mo. 113, 154 S.W. 88.

If full effect cannot be given to the words of a statute they must be made as effective as possible. Old Dominion v. B & L Association v. Sohn, 54 W.Va.101, 46 S.E. 222.

A statute should be construed as a whole and not as disjointed parts.

SPECIAL STATUTES v. GENERAL STATUTES

In the case where the statutes cannot be reconciled the special statute should prevail. U.S. ex. rel. Welch v. Farley, 18 F.Supp. 75. See also U.S. v. Griffin, 14 F. 2d 38. Section

1255 is a general statute referring to the entire class of unauthorized insurers whereas Sections 1249 and 1269 are special statutes because they refer to Excess and Surplus lines, a particular class within the general class thus the special statute R.S.22:1249 should be enforced.

The Louisiana Legislature has considered this approach to interpretation of the statute so important as to write it into law as the First Precept. See La. Civ. Code Ann. art. 9 (West 1990). Louisiana is known as a clear language state when considering this issue.

Thus, no matter which of these principles stated above sis or are applied we come full circle to the well reasoned Marine Marketing, that: the plain language of the statute is that, generally, any unauthorized insurer must comply with the requirement of 1255 to post security except those in 22:1249 B which includes the risks stated therein included in La. R.S. 22:1249B(7) which is the special statute rather than La. R.S. 22:1255 which is the general statute.

It is not for the court to assume that it has a better grasp of what is equitable, fair or just, good or bad, better or worse, wise or foolish, but first to apply the clear and unambiguous meaning rule and only when failing that to interpret the law as to what was intended in its enactment.

The Commissioner had urged the Marine Marketing court to find that the exception was meant to apply only to commercial vessels and the trial court attempted to assist by so interpreting the exemption concluding that coverage for recreational boats was beyond the intended scope of the marine exception. In the case at bar the District Court attempted at the urging of the Plaintiffs to find a legislative intent behind the exception.

Thus the Marketing Court erred when it searched for legislative intent behind these statutes instead of applying the statutes as written. Appellant contends the lower court herein similarly erred in searching for legislative intent instead of applying La.R.S. Sect 22:1249(B)(7) as written. The 5th Cir.

holding is a search for legislative intent that the legislature intended it to function as controlling access to the courts.

Supportive of this premise is Acadiana Shippers, Inc, v. Phoenix Fire & Marine Ins. Ltd. App. (3 Cir. 1994), 640 So.2d 800 "[The] Statute prohibiting persons from acting as agents does not apply to marine insurance".

The exception of Marine insurance is found not only in La.R.S. Sect 22: 1249 but also in La.R.S. Sect 22:611 and in the Regulations Section. Not only is the language clear and unambiguous but the Code is clear and unambiguous. That the Supreme Court of Louisiana refused review of Marine Marketing is persuasive, evidence that the Louisiana Supreme Court approves of the legal conclusions reached by the 1st Circuit Court of Appeal.

Before a court could apply unauthorized insurer provisions to defendant, which claimed to be a surplus line insurer not subject to the unauthorized insurer requirements, a trial on the merits of the case had to b e held to determine defendant's status, Albers v. Schwab, at 221 (Supra) and a trial on the merits is required herein.

CONCLUSION

The conclusion arrived at by the trial court and the support thereof in the 5th Circuit in this case is clearly erroneous as both fact and law for reasons that compelled the same conclusion by the trial court in Marine Marketing, Albers, Vehers and Jacobs.

Traditionally these exceptions have been interpreted to apply to and override the rest of Part XXVII and the Commissioner of Insurance admitted it although he asked the court to deviate.

4. WHETHER THE 5TH CIRCUIT COURT OF APPEAL ERRED IN RULING THAT THE PLAINTIFFS' MOTION TO STRIKE POLARIS' PLEADINGS AND TO ORDER POLARIS TO POST SECURITY WAS DECIDED IN CONSIDERATION OF A MEMORANDUM AND

EXHIBITS THERETO THAT WERE INEFFECTIVE IN THAT THE MEMORANDUM WAS IMPROPERLY SERVED AND THE EXHIBITS WERE NOT SERVED THEREBY DENYING POLARIS DUE PROCESS AND EQUAL PROTECTION OF LAW

Standard of review: de novo; in cases raising constitutional issues, the court has an obligation to make an independent examination of the whole record. See Niemotko v. Maryland, 340 U.S. 268, 271 (1951).

The District Court for the 24th District of Louisiana erred in granting plaintiffs' motion to strike the pleadings and enter judgment because there was no effective evidence to support such finding.

First: there was no newly discovered evidence to support a renewed motion. Second: the Supplementary Memorandum was never properly served on Polaris.

STATEMENT OF THE FACTS

On October 3, the plaintiff made a motion to strike all pleadings of defendant Ins. Co. and to enter judgment. The following day the plaintiff filed a supplemental fact pleading (memorandum) in support of motion. On October 5, both parties were in court as plaintiff was handing the judge exhibits for consideration, plaintiff personally served defense with exhibits in court. Polaris objected based on lack of notice plaintiff stated that he had not served the defense prior to the hearing. Polaris had not received the Supplemental Motion nor the exhibits thereto prior to the hearing. Plaintiff now repeated its ambush pattern. Polaris counsel left San Diego, California on October 4, 1996 in order to be in New Orleans, Louisiana on October 5, 1996. On 10/4/96 Plaintiff served Polaris by facsimile at his office in California while he was on a plane to Louisiana for the hearing. The court had held the matter in abeyance and continued the trial date until October 29, 1996.

On October 17, 1996 plaintiff filed a Supplemental Memorandum and for reconsideration of its October 3, 1996 Motion to Strike or to Post Security CR Pages 706-709. On

October 24, 1996 plaintiffs repeated the abusive procedure of October 4, 1996 on October 24, 1996 and filed another joint supplemental fact pleading (memorandum) without permission see CR and served Polaris by FAX at 4:00 p.m. on 10/24/96 San Diego time one day and less than 24 hours before the hearing. Service by FAX was not authorized unless agreed upon by the parties prior to service until 1997. La. R.S. 13:3471 (8) (1997). No exhibits were filed or on 10/24/96. Plaintiffs brought a single set of exhibits into court at the hearing on October 25, 1996. CR pages 807-812. During the hearing Polaris objected to the late filing and not having received the exhibits. Polaris was unable to respond in so short a time.

ARGUMENT

In cases raising constitutional issues, this court has an obligation to make an independent examination of the whole record. Niemotko v. Maryland, 340 U.S. 268, 271 (1951).

Granting a renewed motion based on a supplemental memorandum was improper because there was no new evidence. La. Code of Civ. Proc. art. 1155 (West 1996). The supplemental memorandum filed on October 24, 1996 was not timely filed nor properly served and Polaris was severely prejudiced thereby being unable to respond at all.

This judicial proceeding violated the Due Process Clause of the Fourteenth Amendment because counsel for defendant Ins. Co. was not given timely and proper notice in which to raise defenses due to improper service of pleadings and exhibits in violation of the Louisiana Code of Civil Procedure Service of papers in re: motions and as supplemented by the Local Rules of Court of the 24th District of Louisiana.

The District Court for the 24th District of Louisiana erred in granting renewed motion because there was no competent, new evidence to support such a finding. La. Code of Civ. Pro. art. 1155(West 1996). Supplementary pleadings must set forth items which have become exigible since the date of filing the original petition. Plaintiffs had the facts introduced in the

supplementary pleading at the time they filed their original petition but, failed to include them in their first Motion to Strike Polaris Pleadings.

The most important facts were the original insurance policies which plaintiff M/H had even before suit herein was filed and certainly had then on October 3, 1996 when they filed their Joint Motion and Memorandum to Strike Pleadings or Post Security. Thus, plaintiffs were precluded from supporting their motion based on these documents and the court was not entitled to review them as part of the evidence herein.

The 5th Circuit is in error when it found that there was no prejudice because the District Court did not permit the filing of the Supplementary Memorandum. The court record shows that contrary to this 5th Cir. ruling at page 20 of its Opinion that it was the not the plaintiff's Supplemental Memorandum of October 17, 1996 but the Supplemental Memorandum of October 24, 1996 and its Exhibits of October 25, 1996 that the District Court relied upon in making its ruling. CT 940-1056 Ex.

The Due Process Clause of the Fourteenth Amendment provides, that no state shall "... deprive any person of life, liberty, or property without due process of law."

The Louisiana Code of Civil Procedure seeks to ensure that due process is complied with by requiring that, "every pleading subsequent to the original petition be served on the adverse party." La. Code of Civ. Proc. art. 1312 (West 1996).

Furthermore, local rules provide that, "in all cases where notice is required, and no time is specified by law, by these rules, or by the order of court, seventy-two (72) hours shall be allowed." Local Rules of Court for the 24th District of Louisiana, Parish of Jefferson. Rule XVI CIVIL RULE XVI NOTICE

Local rules, CIV RULE XVII EXHIBITS, also provide, "all exhibits shall be exchanged between parties seventy-two (72) hours in advance of the trial or hearing." Local Rules of Court for the 24TH District of Louisiana XVII.

Plaintiffs' ambush of October 5, 1996 was repeated on October 24, filing another joint supplemental memorandum. At the hearing Polaris objected to the introduction of the exhibits without having been served several pages long with a set of exhibits six inches high. The District Court condoned this breach of notice requirement. The 5th Circuit Court of Appeal dismissed Polaris' Assignment of Error on the basis that there was no prejudice shown. Breach of the procedural requirement for timely service of all pleadings is prima facie evidence of prejudice. Unauthorized and defective service of a memorandum of several pages which constitutes the core of the movant's motion is prejudicial. See record filed herein referring to the exhibits provided on October 24, in violation of local rules Claiming that the the late brief was not used however the record shows otherwise Unauthorized service by FAX is no service at all. Service by FEDERAL EXPRESS with delivery made at the same time the actual hearing was in progress is prejudicial. See CT pgs # which shows that the operative pleading which was actually at issue was the one filed on October 24, 1996. It matters not if the motion was filed on October 17, 1996 if the operative pleading was filed on October 24, 1996 and the six inch thick book of exhibits was brought into court at the time the hearing was scheduled. That service be timely requires that service be made within time for the opposing party to review the pleadings consider the allegations review the exhibits compose a response and file that response none of which Polaris was afforded in the time frame herein. Plaintiffs did not request nor did the court grant any order shortening time.

CONCLUSION

The Lower Court erred when it granted a motion striking Polaris pleadings resulting in a default judgment based on a supplementary motion pleading improperly served which contained no facts previously unknown to plaintiff. See Appendix Doc.s

5. THE ADVERSE PRESUMPTIONS ARE NOT SUPPORTED BY THE FACTS OR THE LAW ARE IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE UNITED STATES CONSTITUTION

STANDARD OF REVIEW, based on clear error of law and fact is de novo.

On receipt of underwriting files through discovery Plaintiffs complained a "quote letter" allegedly dated October 6, 1993, referred to in the files, was not among the documents produced and that there was not an application for each and every policy. The court on motion ordered Polaris to produce in court copies of the quote letter and the applications. Polaris made a diligent search of its files and answered that it had made said diligent search of its files and could not locate the referenced "quote letter". The court, on motion of Plaintiffs, ruled that there was an adverse presumption that the contents of the letter was unfavorable to Polaris position and ruled that the letter offered crew and employee coverage and that M/H had asked for crew coverage in the application.

The application for insurance coverage is governed by the general rules of contract. Upton v. Fidelity Standard Life Ins. Co., App, 1996 185 So.2d 297. An application of insurance is not a contract of insurance but merely a proposal or offer by an applicant for purchase of insurance. Upton v. Fidelity Standard Life Ins. Co., (Supra) An application for insurance is an offer, which does not become a contract until accepted by the insurance company through one authorized to do so [al]though accompanied by a premium note. Foster v. Morrison, App. 1933, 145 So. 13. Acceptance is made by delivery of binder or delivery of policy to the insured without its objection.

Applying the above, the insured is only entitled to the terms in the policy it received and the application itself is of no consequence. Likewise a quote letter is of little consequence being only part of negotiation preceding the contract.

Not withstanding that Polaris did not produce an application, it offered proof that plaintiff Magnolia Holdings did not send the application in that M/H was sent numerous demands for the completed application even after the policy itself had been sent to M/H. M/H produced no evidence that it ever sent the application to Fogg and no evidence that Fogg ever sent the application to Polaris.

The blank application provided to show that Polaris never received an application was provided to counsel by Mr Carl J. Hebert Esq. Counsel for M/H. It had been attached to the communication from Fogg, Plaintiff's insurance agent to M/H with a request that it be filled out and returned. See CR

The form application used by Polaris in this case states: see CR page 771 Application last paragraph:
"I understand that I am in no way bound to accept any quotation which the Company may make and that the Company is not bound to accept the risk. I understand that the insurance offered is offshore to the United States for commercial marine risks and has been solicited by me to the Company directly or through an agent who has explained this risk to me."

Assuming the worse case scenario, Polaris quoted a rate for crew coverage. A quote is not an offer that may be accepted. It is only a statement of rates. A policy whose terms differ from that of the application constitutes a counter-offer. Acceptance of the policy constitutes acceptance of the counter-offer.

An insured cannot accept the contract claiming not to have read it, put it into a drawer or file and forget about it until the occurrence of some catastrophic event and only then review the policy's terms for coverage and finding none complain that he wanted coverage that is not provided in the policy.

The policy itself is the ultimate evidence of insurance. The Plaintiff M/H had the original policies at all times herein.

The binder was delivered at a time when Polaris was asking for the application and when Fogg was trying to get it from M/H to send it to Polaris. See CR page 738 for Binder

for River Products the former name of Maintenance Dredging, Inc. and CR page 739 for Magnolia Holdings, Inc. The Binders recite that they were issued on November 6, 1993. That date is consistent with the date of coverage on the policies; the numbers of the binders are consistent with the numbers of the policies.".

No premium is charged opposite this annotation. The only plausible interpretation for these entries is that M/H was required to carry insurance for its employees on a separate policy and that the Polaris policy did not cover them.

Plaintiffs request for an adverse presumption of was an attempt to have the District Court rewrite the insurance contract. Courts have no authority to change or alter the terms of insurance policies. Jacobs v. Metropolitan Insurance Co., App. 39 So.2d 346. Disregard of this clear and convincing evidence was a clear abuse of discretion.

CONCLUSION

There are no facts whatsoever to support the adverse presumption regarding the failure to produce an application which for the policy herein whether it establishes that M/H requested Crew Coverage or not. On the contrary, the facts clearly show that plaintiff M/H never submitted an application.

Polaris explanation for failure to produce the application and was reasonable and supported by the evidence. Polaris provided a compelling and excuplatory explanation therefor in that the plaintiff had never sent it the application to Polaris. Thus the order creating an adverse presumption regarding the application should have been reversed.

6. THE 5TH CIRCUIT COURT OF APPEAL ERRED IN RULING THAT STATE of Louisiana In the Interest of J.B., 499 So. 2d 611 IS APPLICABLE AND POLARIS APPEAL WAS UNTIMELY.

Furthermore, the 5th Circuit attempt to dismiss Polaris' claim with citation of STATE of Louisiana In the Interest of

J.B., 499 So. 2d 611 is and in error. J.B. concerns the appealability of a contempt citation which is final immediately This is a case of an interlocutory order.
No dismissal was made for contempt instead the plaintiff's motion to strike defendants pleading on failure to post bond was granted. See CT at pgs. 807- 818.

CONCLUSION
THIS COURT SHOULD GRANT Polaris permission to file a full brief on appeal.

10/30/98

Respectfully submitted,

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